THE HON'BLE SRI JUSTICE A.GOPAL REDDY

WRIT PETITION No.22839 of 2000
AND
CONTEMPT CASE No.1415 of 2004

Date: 20.06.2007

WRIT PETITION No.22839 of 2000

Between:

Khagendranath Roy & others

..... PETITIONERS

AND

1. The Deputy Executive Engineer,
   Rural Water Works Scheme (PR),
   Sirpur (T), Adilabad District and another

.....RESPONDENTS

THE HON'BLE SRI JUSTICE A.GOPAL REDDY

WRIT PETITION No.22839 of 2000
AND
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COMMON ORDER:

The petitioners, who are four in number, filed W.P.No.22839 of 2000 under Article 226 of the Constitution of India, seeking direction to the respondents to regularize their services and to pay minimum time scale of pay to them with all attendant benefits along with arrears.

Pending writ petition, the petitioners sought for a direction to the respondents to pay minimum time scale of pay to them corresponding to the respective category of regular employees. This Court, on 24.11.2000, granted interim direction to the respondents to pay minimum time scale of pay to the petitioners in the posts held by them. On filing vacate stay petition by the respondents, this Court, on 20.08.2001, passed the following order:

> "Admittedly the petitioners, who were appointed as Boring Mechanics on consolidated/daily wage mechanic, were not against the sanctioned posts. Therefore, no minimum time scale is attached to the said post.
>
> In view of the same, interim direction granted by this Court on 24.11.2000, is modified as follows:
>
> The petitioners shall be paid minimum wages as applicable under the Minimum Wages Act."

Alleging that the said modified order, dated 20.08.2001, has not been complied with by the respondents, the petitioners filed C.C.No.1415 of 2004.

At the request of the learned counsel appearing for both the parties, the contempt case and the writ petition were taken up together for hearing and are being disposed of by this common order.

The facts giving rise for filing the writ petition, in brief, are as under:

It is stated that the first petitioner, who passed 7th class, was appointed as Boring Mechanic on consolidated/daily wage basis in June, 1987. Initially, he was paid Rs.450/- per month and the same was enhanced from time to time and he is getting Rs.1200/- per month on the date of filing of the writ petition. The second petitioner, who passed 8th class, was appointed as Boring Mechanic on daily wage/consolidated pay in August 1988 in Bejjur Mandal. He worked till August, 1994 in Bejjur Mandal. Subsequently, he was transferred to Sirpur Kagaznagar Mandal in 1994. Initially, Rs.450/- per month was paid to him, and the same was enhanced from time to time and by the time of filing this writ petition, he was getting Rs.1,200/- per month. The third petitioner, who studied up to Intermediate and passed I.T.I (Borewell Mechanic Trade), was appointed as Boring Mechanic in Bejjur Mandal on daily wage/consolidated pay basis on 01.03.1995. Initially, he was paid Rs.600/- per month and by the time of filing this writ petition, he was getting Rs.1200/- per month. Similarly, the fourth respondent, who studied up to Intermediate, was also appointed as Boring Mechanic in Kagaznagar Mandal in May, 1995 on daily wage/consolidated basis. Initially, he was paid consolidated pay of Rs.600/- and the same was enhanced from time to time and he was getting Rs.1400/- per month by the date of filing the writ petition. It is also stated that the petitioners are discharging their duties as Boring Mechanics and also identical duties as that of regular employees. Though they have been working since more than 6 to 13 years, the respondents are not paying time scales to them nor regularizing their services. It is also stated that the petitioners are entitled to regularization of their services and minimum time scales of pay on expiry of five years from the date of appointment. They are also entitled to the benefit of equal pay for equal work. It is further stated that in a similar matter, in W.A.No.603 of 1995, this Court directed the employer to pay minimum of pay scale, pending regularization of

services of daily wage employees. Hence, the present writ petition for the relief as aforementioned.

The first respondent, the Deputy Executive Engineer, Rural Water Works Scheme (P.R), Sirpur (T), Adilabad District, filed a counter-affidavit along with the vacate stay petition denying the appointment of the petitioners as Boring Mechanics on consolidated/daily wage basis. It is stated that there are no such sanctioned posts in any of their Mandals and that the works are carried only on piecework system according to the approved rates from time to time towards major and minor repairs of hand pumps. It is also stated that there is no person by name Y.Nagulu of
Bore well Mechanic. But, there is one person by name P.Nagulu, who worked as a piece worker on rate contract basis. The said incumbent approached the Andhra Pradesh Administrative Tribunal, Hyderabad and the case is pending. The respondents are not paying any time scale to him. It is further stated that in the absence of any sanctioned posts and since the petitioners were engaged on piece rate basis, they are not entitled to regularization of their services.

No reply has been filed by the petitioners denying the averment made in the counter-affidavit that the petitioners' were engaged on piece rate basis, nor any proof is filed showing that they were engaged on consolidated basis.

The certificates issued by the Mandal Parishad Development Officers, Kowtala and Bejjur Mandals and the Mandal Parishad Superintendent Officer, Mandal Parishad, Kagaznagar are filed by the petitioners along with the writ petition. The said certificates show that petitioners 1, 2 and 4 are working in their offices since 29.06.1987, August 1988 and May, 1995 to March 1997 respectively and that the payment was made by the E.E (P.R) Asifabad. But, the said certificates do not disclose that their services were engaged on consolidated salary as stated by the petitioners.

The learned counsel for the petitioners fairly conceded that in view of the law declared by the Supreme Court in ***Secretary, State of Karnataka v. Uma Devi (3)***[1] and ***Indian Drugs & Pharmaceuticals Limited v. Workmen, Indian Drugs & Pharmaceuticals Limited***[2]**,** the petitioners are not entitled to regularization and no such direction be issued by the High Court for regularization unless the recruitment itself was made regularly and in terms of the constitutional scheme.

The five Judge Bench of the Supreme Court in ***Secretary, State of Karnataka's case*** (1 supra) held as follows:

> "While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain – not at arm's length–since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that

employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not *(sic)* one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution."

"When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these

> persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

The learned counsel for the petitioners is not able to point out any statutory rule on the basis of which the petitioners claim continuation in service or payment of regular salary. It is well settled that a mandamus cannot be issued for regularization of services and payment of regular salary to a casual, ad hoc, or daily-rated employee, unless there exists some rule.

The Supreme Court in ***Indian Drugs & Pharmaceuticals Limited's case*** (2 supra), while considering its judgment in ***Secretary, State of Karnataka's case*** (1 supra) held that there is no legal right for temporary employees (whether called casual, ad hoc or daily-rated workers) to get absorption, or to be continued in services or get regular pay.

In the circumstances, no mandamus can be issued as prayed for. The writ petition fails and the same is accordingly dismissed.

Coming to the Contempt Case, it was filed alleging that the respondents have willfully disobeyed the orders passed by this Court in W.V.M.P.No.191 of 2001 in W.P.M.P.No.29014 of 2000 in W.P.No.22839 of 2000, dated 20.08.2001.

The second respondent filed a counter-affidavit in the contempt case stating that the petitioners were paid Rs.10/- for minor repairs and Rs.50/- for major repairs of bore wells. It is also stated that the petitioners were not engaged daily and that from 1998 to 2000 they have been paid repairing charges whenever they attended the repairs. From 2001, the repairing works were entrusted to the contractors and the maintenance work was looked after by them as per rate contract

agreement. As per G.O.Ms.No.421 PR & RD (RWS-I) Department, dated 21.11.2002, the bore wells were handed over to the Gram Panchayats and the maintenance work was also transferred to them. At present, the maintenance of bore well work is entrusted to Mandal Parishad according to G.O.Ms.No.234 PR & RD Department, dated 19.08.2004. In view of the same, the payment of repairing charges as per the Minimum Wages Act does not arise since the petitioners never discharged their duties under the control of the Department and they were not employed in any manner according to the employment rules and not appointed by any competent authority. The averment of the petitioners that they were paid Rs.1500/- per month up to August, 2003 was denied, as the bore well repairing work was entrusted to the contractors with rate contract agreement.

No reply has been filed by the petitioners denying the averments made by the respondents in the counter-affidavit, and it is not brought to the notice that minimum wages are prescribed to the piece rate workers entrusted with the repairing of bore wells under the Minimum Wages Act. In view of the same, unless it is shown that the respondents willfully violated the orders of this Court, they can be purged under the Contempt of Courts Act, and the contempt case is accordingly dismissed.

In the result, the Writ Petition and the Contempt Case are dismissed. There shall be no order as to costs.

A. GOPAL REDDY, J

Date: 20.06.2007

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[1] (2006) 4 SCC 1

[2] (2007) 1 SCC 408